IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10693 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ASSOCIATION OF MANAGEMENT OF GUJARAT UNAIDED ENGINEERING - Petitioner(s)
Versus
JUSTICE RJ SHAH ADMISSION COMMITTEE FOR PROFESSIONAL & 1 - Respondent(s)

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Appearance :
MR MR DC DAVE for Petitioner(s) : 1,
MR AD OZA WITH MR DIPAK R DAVE for Respondent(s) : 1,
MR KAMAL B TRIVEDI Advocate General WITH
MS.SANGEETA VISHAN AGP for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 19/06/2006

CAV JUDGMENT

1. By way of this petition under Article 226 of the Constitution of India, the petitioner – Association of Management of Gujarat Unaided Engineering Colleges and Institutions (hereinafter referred to as "the S.F.I.) has challenged the legality and validity of the decision of the respondent No.1 – Admission Committee directing the members of the petitioner Association Self Finance Engineering Colleges in the State to grant admission to the 1st year Degree Engineering Courses either by taking Common Entrance Test and the merit list prepared on that basis or to grant admission to the 1st year Degree Engineering Courses on the basis of the merit list prepared considering the marks obtained in Higher Secondary Examination (H.S.S.E.) (60%) and Common Entrance Test conducted by the State Government which is known as "GUJCET" (40%) and refusing to grant permission to the Self Financed Institutions in

the State to grant admission on the basis of the marks obtained in Higher Secondary Education which is also qualifying examination.

2. The short but interesting question which has been raised in the present petition is that whether the Self Financed Institutions can grant admission in the 1st Year of Degree Engineering solely on the basis of marks obtained in standard 12th Examination (H.S.C. Examination) and whether the Self Financed Institutions can treat qualifying examination (H.S.C. Examination) itself as base and/or Common Entrance Test for the purpose of admission in the 1st Year of Degree Engineering courses and/or the Admission Committee appointed by the State Government can insist the Self Financed Institutions to take Common Entrance Test and grant admission in the 1st Year Course on the basis of marks obtained in Common Entrance Test and in default to grant admission on the basis of marks obtained in H.S.C. Examination and GUJCET.

3. The impugned decision of the respondent No.1 Admission Committee commanded that instead of granting admission in 1st year of Degree Engineering

Courses on the basis of 12th Standard Examination in Science Stream in Unaided Colleges in the State which are members of the petitioner Association, should grant admission to the said courses by taking an entrance examination through the petitioner Association and if they do not intend to do so, then in that case, they must admit the students to the said students by following combination of said 12th Standard Examination in Science Stream and examination conducted by the State Government which is known as GUJSET undertaken by the State for admission to the Government and Grant-in-Aid Colleges.

4. The petitioner is an Association of Unaided (Self-Financed) Engineering Colleges in the State. There are about 22 such Colleges in the State. Out of said 22 Unaided Engineering Colleges, in all 19 colleges are with the petitioner Association. Meaning thereby for 19 colleges, the present petition has been filed. The respondent No.1 is Admission Committee for professional courses (Higher and Technical Education) appointed by the State Government pursuant to the order passed by the Hon'ble supreme Court known as Justice (Rtd.) R.J.Shah Committee for Professional

Courses (Higher and Technical Education).

5. The case of the petitioner narrated in the petition is that consequent to the decision of the Hon'ble Supreme Court in the case of P.A. Inamdar Vs. State of Maharashtra, reported in 2005(6) SCC 537, the petitioner Association addressed a communication dtd.27/9/2005 to the Member Secretary of the respondent No.1 Admission Committee conveying that for the academic year 2006-2007, all its members unaided engineering colleges in the State would be granting admission to the 1st year degree engineering courses on the basis of 12th standard examination in science stream undertaken by the State level Higher Secondary Education Board by taking into consideration the marks obtained by the concerned students in the theory subjects of Physics, Chemistry and Mathematics. In the said communication, it was also pointed out that so far as the students passing 12th standard examination from the Central Board are concerned, a separate quota would be carved out for them on proportional basis bearing in mind the number of students passing from the Central Board (CBSC). By communication dtd.27/10/2005, the Member Secretary of the respondent No.1 Admission

Committee was again communicated the decision of the petitioner Association and explained in detail the rational for taking 12th standard examination as basis for the purpose of admission. Again by communication dtd.21/2/2006, the Member Secretary of the respondent No.1 Admission Committee was appraised in brief about the modalities of the admission process proposed to undertaken by the petitioner Association through a single window system. It is the case of the petitioner that the aforesaid was followed by the meeting petitioner Association had with the officials of th State including the Member Secretary of respondent No.1 Admission Committee. It is also the case of the petitioner Association that during the course of the aforesaid meeting, the petitioner Association was given to understand that the respondent No.1 Admission committee has no objection to the aforesaid methodology for admission evolved by the petitioner Association. It is also the case of the petitioner Association that the petitioner Association prepared a prospectus containing Rules for admission process and forwarded the same to the Director of Technical Education and the Member Secretary of the

respondent No.1 Admission Committee vide communication dtd.29/4/2006. That thereafter, the Admission Committee through its Secretary served the impugned communication upon the petitioner Association vide communication dtd.4/5/2006 to which the petitioner association submitted representation in detail on 5/5/2006. As there was no response from the respondent No.1 Admission Committee, looking to the urgency, the petitioner has preferred the present petition under Article 226 of the Constitution of India.

The present petition was heard at length finally during Summer Vacation looking to the urgency more particularly on 29/5/2006 and during the course of hearing, it was submitted on behalf of the admission committee that it has not taken any final decision and it would like to consider the issue and the representation submitted by the petitioner association and hence this Court passed the following order on 29/5/2006;

> *"The matter is heard at length and the arguments and submissions on behalf of the petitioners are already concluded. Shri K.B. Trivedi, learned Advocate General as well as Shri A.D.Oza, learned advocate for Mr.Justice R.J. Shah Admission Committee for Professional Course (Higher and Technical Education) [hereinafter referred to as the "Committee" for short] have jointly submitted that as*

such,the Committee has not taken any final decision which is disputed by Shri D.C.Dave, learned advocate appearing on behalf of the petitioner. Relying upon the communication at page.44 & 45 of the petition which is impugned in the present Special Civil Application it is submitted by Shri Dave, learned advocate appearing on behalf of the petitioner that in fact, the Committee had met and has taken a decision, however, Shri K.B.Trivedi, learned Advocate General and Shri A.D.Oza, learned advocate for the respondent No.1 have submitted that as such, no decision has been taken. It is also submitted by them that after communication dated 4.5.2006 there is representation by the petitioner on 5.5.2006 and without giving sufficient time, the present Special Civil Application is filed on 9.5.2006 and because of the pendency of the present Special Civil Application, no decision has been taken by the respondent No.1 and/or representation dated 5.5.2006 submitted by the petitioner has not been considered. It is also further submitted that the respondent No.1 – Committee is ready and willing to consider the representation of the petitioner dated 5.5.2006 objectively and an appropriate decision will be taken and therefore, it is requested to reserve the liberty in favour of the respondent No.1 – Committee to take an appropriate decision. Considering the above, the respondent No.1 – Committee is directed to consider the representation submitted by the petitioner dated 5.5.2006 objectively and take an appropriate decision on the said representation on or before 1st June, 2006 and place the said decision on record of this petition on 2nd June, 2006. It will be open for the petitioner to request for personal hearing which may also be considered by the respondent No.1 – Committee. At this stage, it is submitted on behalf of the respondent No.1 – Committee that let the representative of the petitioner shall remain present for personal hearing on 30th May, 2006 at 5.00 P.M. So that the Committee may consider their views also.

In above view of the matter, the matter is adjourned to 2nd June, 2006.

Direct Service is permitted today."

That thereafter, the representative of the petitioner association and their advocate came to be heard by the Committee and thereafter, the admission committee issued the impugned communication dtd.31/5/2006 reiterating what was stated earlier i.e. directing the members of the petitioner association to take Common Entrance Test and grant admission in the 1st Year Engineering Colleges on the basis of

the merits / marks obtained in such Common Entrance Test and the said Common Entrance Test to be conducted by the petitioner association or to grant admission by following the combination of 12th standard examination in science stream (60%) and GUJSET (40%) i.e. on the basis of the admission to be granted by the State for admission to Government and Aided Colleges. Being aggrieved by and dissatisfied with the same, the petitioner Association has preferred the present petition under Article 226 of the Constitution of India.

6. The following issues have been arisen for consideration of this Court for deciding the controversy involved in the present petition;

(i) Is it permissible for the petitioner Association / Self Financed Engineering Colleges in the State to admit the students in the 1st Year Degree Courses on the basis of he marks obtained in 12th Standard Examination i.e. the examination conducted by the State Level Higher Secondary Education Board or is it mandatory for the Self Finance Institutions or Association of Self Financed Institutions to undertake

an entrance examination (to undertake separate entrance examination) (Common Entrance Test) for the purpose of admission over and above 12th standard examination. In other words, is it permissible for the petitioner Association and/or Self Financed Institutions to treat the examination conducted by the Higher Secondary Education Board which is State level, as Common Entrance Test and grant admission on that basis without conducting additional Common Entrance Test?

(ii) Is it within the jurisdiction of the admission committee to issue direction which is having virtually effect of thrusting process admission upon Unaided Engineering Colleges i.e. Self financed Institutions?

7. Mr.D.C. Dave, learned advocate appearing on behalf of the petitioner has vehemently submitted that the decision of the admission committee is based upon the decision of the Hon'ble Supreme court in the case of P.A. Inamdar (supra). It is submitted that the admission committee has proceeded on the premise as if an entrance test over and above 12th standard examination in science stream is sine-qua-non and

therefore it is within the competence of the admission committee to insist that the member of the petitioner association / petitioner association should either take an entrance test or in the alternate, should follow the concerned entrance test conducted by the State over and above 12th standard examination in science stream. Mr.Dave has further submitted that the Hon'ble Supreme Court in the case of P.A.Inamdar (supra) has never considered the aspect as to when the Self Financed Institutions wants to give admission on the basis of marks obtained in H.S.C. Examination (qualifying examination). Still the association has to conduct the Common Entrance Test over and above 12th standard examination. While relying upon the judgement of the Hon'ble Supreme court in the case of Islamic Academy of Education Vs. State of Karnataka, reported in (2003) 6 SCC 697, it is submitted that the direction issued by the Admission Committee, as stated hereinabove is beyond its jurisdiction. It is also further submitted by him that pursuant to the order passed by this Court dtd.29/5/2006, detailed submissions were made by the petitioner association. However, in the decision dtd.31/5/2006 the

submissions made for and on behalf of the petitioner association has been mis-construed by the Admission Committee, inasmuch as at no point of time, it was given to understand to the committee that the petitioner association intends to grant admission on the basis of 12th standard examination in science stream only for the current academic year and therefore, it should be permitted to do so. It is submitted that as a matter of fact, during the course of hearing before the Committee for and on behalf of the association it was submitted that even if the respondent No.1 admission committee is of a different view in the peculiar facts of the present case keeping all the controversy open to be resolved in future, at least for the current academic year, the admission committee should permit the grant of admission by the Self Financed Institutions in the discipline of Engineering on the basis of 12th Standard Examination in science stream. It is submitted that the aforesaid submissions was made for the purpose of working out amicable solution and, therefore, the same should have been construed accordingly by the admission committee.

8. Mr.Dave, learned advocate appearing on behalf of the

petitioner has referred to and rely upon the following decisions of the Hon'ble Supreme Court;

(i) TMA Pai Foundation vs.State of Karnataka.
reported in (2002) 8 SCC 481.
(ii) Islamic Academy of Education
Vs. State of Karnataka
reported in (2003) 6 SCC 697
(iii) PA Inamdar vs. State of Maharashtra,
reported in (2005) 6 SCC 537.
(iv) AIR 1972 SC 1375
Mannan Lal Vs.Ms.Chhotka Bibi (decd) by her legal representative and ors,
(v)AIR 2004 SC 1861
State of Tamilnadu & Anr. Vs. S.V. Bratheep (minor) & Ors.
(vi)(1996) 5 SCC 732
Shri Chander Chinar Bada Akhara Udasin Society & Ors. Vs. Stateof J&K & Ors.
(vii)(1998) 3 SCC 183
Ravindra Kumar Rai Vs. State of Maharashtra and ors.
(viii)(1999) 2 SCC 48
State of Maharashtra and ors. Vs. Ravindra Kumar Rai.

9. Mr.Dave, learned advocate appearing on behalf of the petitioner has submitted that decision in PA Inamdar (supra) is not aimed at overruling or even diluting in any manner what emanates from the decision in TMA Pai (supra). He has relied upon the following paragraph of the decisoin in PA Inamdar (supra);

> *"At the very outset, we may state that our task is not to pronounce our own independent opinion on the several issues which arose for consideration in Pai Foundation. Even if we are inclined to disagree with any of the findings amounting to declaration of law by the majority in Pai Foundation, we cannot; that being a pronouncement by 11-Judge Bench, we are bound by it. We cannot express a dissent or disagreement, however, we may be inclined to do so on any of the issues. The real task before us is to cull out the ratio decidendi of Pai Foundation and to examine if the explanation or clarification given in Islamic Academy runs counter to Pai Foundation and if so, to what extent. If we find anything said or held in Islamic Academy in conflict with Pai Foundation, we shall say so as being a departure from the law laid down by Pai Foundation and on the principle of binding efficacy of precedents, overrule to that extent the opinion of the Constitution Bench in Islamic Academy.""*

Relying upon the aforesaid para of the PA Inamdar (supra), it is submitted that a reference was made to seven judges bench of the Supreme Court in PA Inamdar to ascertain as to whether the directions contained in Islamic Academy judgement, were in conflict with decision in TMA Pai. It is submitted that Islamic Academy provided for three fold directions namely (i) constitution of committees for admissions and fees (ii) bifurcation of seats into state and management quota and, (iii) entrance test for admissions not college wise but through Association of colleges. He has also further submitted that reference was made to seven judges bench in PA Inamdar, as the directions in Islamic Academy were questioned in two matters i.e. in PA Inamdar Vs. State of Maharashtra & Ors (2004) 8 SCC 139 and in

Pushpagiri Medical Society Vs. State of Kerala and Ors. (2004) 8 SCC 135. He has relied upon para 26 of the decision in PA Inamdar (supra) which reads as under;

> *"These matters have been directed to be placed for hearing before a Bench of Seven Judges under Orders of the Chief Justice of India pursuant to order dated July 15, 2004 in PA Inamdar and Ors. Vs. State of Maharashtra and Ors. (2004) 8 SCC 139 and order dtd.July 29, 2004 in Pushpagiri Medical Society Vs. State of Kerala and Ors.,(2004) 8 SCC 135. The aggrieved persons before us are again classifiable in one class, that is, unaided minority and non-minority institutions imparting professional education. The issues arising for decision before us are only three;*
>
> *(i) the fixation of "quota" of admissions/students in respect of unaided professional institutions;*
>
> *(ii)the holding of examinations for admissions to such colleges, that is, who will hold the entrance tests; and*
>
> *(iii) the fee structure.""*

10.It is further submitted by Mr.Dave that so far as the present petition is concerned, the question has arisen with regard to second issue i.e. holding examinations for admissions to such Self Financed Institutions, i.e. who will hold the entrance tests. It is further submitted that the said question arose in PA Inamdar case on account of the fact that some of the colleges which did not join the Association of colleges, claimed right to hold a separate entrance test, as available to them under TMA Pai. According to Mr.Dave, "who should hold the common test"? was

the point of reference in PA Inamdar and not “When should one hold the common entrance”? It is submitted that this distinction needs to be noticed while reading decision in PA Inamdar. It is further submitted that in light of the aforesaid, an appropriate issue came to be framed by the Hon'ble Supreme Court vide paragraph No.27 of the decision in PA Inamdar, on the aspect of right of Unaided colleges to hold an entrance test and thereupon the same came to be answered vide paragraphs 136 and 137 of the decision in PA Inamdar. It is submitted by Mr.Dave that while answering the same, the Hon'ble Supreme Court upheld the dictum laid down in Islamic Academy directing that there cannot be entrance test college-wise, as the same will cause inconvenience to the students and hence, if unaided colleges decide to have entrance test for admissions, it has to be through their association. It is, therefore, submitted that in substance, the decision in PA Inamdar has simply upheld Islamic Academy on the aspect of entrance test on the premise that the directions contained in Islamic Academy on the issue of entrance test are not in conflict with TMA Pai. As such, on the aspect of entrance test, PA Inamdar,

interpreting the directions contained in Islamic Academy as not in conflict with TMA Pai simply prescribes triple test for its acceptance by the Admission Committee. He has relied upon para 137 of the PA Inamdar which reads as follow;

> *"137. The same principle applies to non-minority unaided institutions. There may be a single institution imparting a particular type of education which is not being imparted by any other institution and having its own admission procedure fulfilling the test of being fair, transparent and non-exploitative. All the institutions imparting same or similar professional education can join together for holding a common entrance test satisfying the above triple tests. The State can also provide a procedure of holding a common entrance test in the interest of securing fair and merit-based admissions and preventing mal-administration. The admission procedure so adopted by private institution or group of institutions, if it fails to satisfy all or any of the triple tests, indicated hereinabove, can be taken over by the State substituting its own procedure. The second question is answered accordingly.""*

It is further submitted that from the aforesaid analysis of the decision in PA Inamdar, it is apparent that there is nothing therein which can be construed as a mandate to the unaided colleges to hold entrance test thorough their association over and above 12th standard. As a matter of fact, an issue as to whether a common entrance test over and above 12th standard is sine qua non or not was not the subject matter of PA Inamdar. Therefore, there was no occasion for the Hon'ble Supreme Court in PA

Inamdar to deal with the issue as to whether is it compulsory not to grant admissions solely on the basis of 12th standard and thereupon, to hold and entrance test over and above 12th standard examination for the purpose of admissions. If it were otherwise, the Hon'ble Supreme Court would have discussed in PA Inamdar the pros and cons of relying upon 12th standard examination for the purpose of admission and thereupon, would have explained as to for what reason it is sine qua non to hold an entrance test over and above 12th standard examination for the purpose of admission. It is further submitted that a reference was made to the seven judges bench in PA Inamdar on account of certain directions issued in Islamic Academy inasmuch as it was contended that while issuing the said directions, Islamic Academy over stepped TMA Pai and in view of this, undoubtedly, the subject matter PA Inamdar could not travel beyond the precincts of Islamic Academy. It is also further submitted that Islamic Academy does not contain a direction that admissions on the basis of 12th standard are prohibited and it is mandatory to hold entrance test over and above 12th standard. Therefore, it is submitted that something

which was not there in Islamic Academy can never be the subject matter of PA Inamdar. Under the aforesaid circumstances, the reliance placed by the respondents on the question appearing at Sr.No.(ii) in para 27 of the PA Inamdar Judgement, is wholly unwarranted. The said question does not lead to construction, that the issue as to when one should go for common entrance test over and above 12th standard for the purpose of admission is not integral part thereof. Therefore, it is submitted that the issue which arose before the Hon'ble Supreme Court in PA Inamdar was with regard to who should take common entrance test for the purpose of admission without embarking upon th area covered by the issue as to when should one go for common entrance. It is submitted that there is no specific direction and/or observations by the Hon'ble Supreme Court in PA Inamdar prohibiting the admission on the basis of 12th standard examination.

11.Dealing with the concept of common entrance test for the purpose of admission, it is submitted by Mr.Dave that the expression “common entrance test” refers to a common yardstick to prepare a merit list for the purpose of admission. Its need was felt in a

situation where common or composite merit list for admissions were prepared on the basis of qualifying examinations undertaken by the different bodies. In such situations, it was contended that it would be against the concept of equality under Article 14 of the Constitution to have a common merit list of those who are not alike having passed qualifying examinations from different boards. This paved way for the concept of common entrance test. He has relied upon para 10 of the judgement reported in (1996) 5 SCC 732. Para 10 of the said judgement reads as follow;

> *"It need not be pointed out that the percentage of marks secured by different applicants at different types of examinations at the higher secondary stage cannot be treated as uniform. Some of such examinations are conducted at the State Level, others are at the national level including the Indian Schools Certificate Examination. The percentage secured at different examinations are bound to vary according to standard applied by such examining bodies, which is well known. As such a common entrance examination has to be held.""*

12.He has also relied upon the judgments of the Hon'ble Supreme Court in the case of Ravindra Kumar Rai Vs. State of Maharashtra and ors, reported in (1998) 3 SCC 183 and in the case of State of Maharashtra and ors. Vs. Ravindra Kumar Rai, reported in (1999) 2 SCC 48 and has submitted that

in identical situation pertaining to the State of Maharashtra where common merit list was prepared of the students of three different Boards by following some normalization formula was deprecated. It is further submitted that so far as the present case is concerned, as there is separate quota for State and Central Board students, the question of preparing a common or composite merit list for the students of both the Boards would not arise. Therefore there is no need to search for an entrance test over and above 12th standard examination for the purpose of admissions. Relying upon para 41 of the judgement in the case of Mannan Lal Vs. Ms.Chhotka Bibi (dead) by her legal representative and ors, reported in AIR 1971 SCC 1375, It is submitted that such a practice of this nature was approved by the Hon'ble Supreme Court. He has relied upon para 41 of the said judgement which reads as follow;

> *"In D.N. Chanchala Vs. the State of Mysore, AIR 1971 SC 1762 one of the questions of this court had to consider was the validity of the university-wise distribution of seats in the medical colleges run by the State of Mysore. There was three Universities in Mysore State, namely, Karnatak, Mysore and Banglore Universities. The challenge to such distribution of seats was that candidates having lesser marks might obtain admission at the cost of another having higher marks from another university. This Court after a reference to the different standards of examinations held in the three universities, rejected the challenge of discrimination as follows;*

“Further, the Government which bears the financial burden of running the Government colleges is entitled to lay down criteria for admission in its own colleges and to decide the sources from which admission would be made, provided of course, such classification is not arbitrary and has t rational basis and a reasonable connection with the object of the rules. So long as there is no discrimination within each of such sources, the validity of the rules laying down such sources cannot be successfully challenged….In view of the rules lay down a valid classification. Candidates passing though the qualifying reexamination held by a university form a class by themselves as distinguished from those passing through such examination from the other two universities. Such a classification has a reasonable nexus with the object of the rules, namely, to cater to the needs of candidates who would naturally look to their own university to advance their training in technical technical studies, such as medical studies. In our opinion, the rules cannot be justly be attacked on the ground of hostile discrimination or as being otherwise in breach of Article 14.""

13.Mr.Dave has also relied upon para 59 of the decision in TMA Pai and has submitted that as held by the Hon'ble Supreme Court, it is permissible to have admission on the basis of 12th standard. He has relied upon para 56 of TMA Pai Foundation, which reads as follows;

"Merit is usually determined, for admission to professional and higher education colleges, by either the marks that the student obtains at the qualifying examination or school leaving certificate stage followed by the interview, or by a common entrance test conducted by the institution,or in the case of professional colleges, by Government agencies.""

14.Mr.Dave has also relied upon para 10 of the judgement of the Hon'ble Supreme Court in the case of State of Tamilnadu and anr. Vs. S.V. Bratheep

(minor) and ors. reported in AIR 2004 SC 1861 wherein considering the AICTE guidelines, it is held by the Hon'ble Supreme Court that it is permissible to have admission on the basis of 12th standard examination.

He has further submitted that considering the aforesaid two decisions on the aspect of 12th standard examination being permissible base for admissions, the impugned decision of the respondent No.1 admission committee prohibiting the admission on the basis of 12th standard; requiring holding of separate common entrance for admissions through the petitioner association and in the alternate directing admissions on the basis of combination of 12th standard and GUJCET would amount to interfering with the right available to unaided colleges under Article 19(1)(g) of the Constitution. Mr.Dave in support of the above submissions has relied upon the following paragraph Nos.36, 40, 41, 52, 65, 162 of the of TMA Pai decision.

15.Mr.Dave has relied upon para 16 of the judgement in the decision of Islamic Academy and submitted

that as held by th Hon'ble Supreme Court in the said judgement, it is optional for the unaided colleges to take common entrance test. If they do not intend to hold common entrance test through their Association they have to admit students on the basis of common entrance test conducted by the State for its colleges. Para 16 of the said judgement reads as follows;

> *"16. …We thus hold that the management could select students, of their quota, either on the basis of the common entrance test conducted by the State or on the basis of a common entrance test to be conducted by an association of all colleges of a particular type in that State e.g. Medical, engineering or technical etc. The common entrance test, held by the association, must be for admission to all colleges of that type in the State. The option of choosing, between either of these tests, must be exercised before issuing of prospectus and after intimation to the concerned authority and the committee set up hereinafter. If any professional college choose not to admit from the common entrance test conducted by the association then the college must necessarily admit from the common entrance test conducted by the State.""*

16.Mr.Dave has submitted that in the present case, so far as the State is concerned, it is going to admit students on the basis of combination of both 12th standard and GUJCET. Hence, both 12th standard and GUJCET would qualify as common entrance for admissions by the State. It is submitted that the term “Common entrance Test” refers to an examination which provides an entry to a particular course. It is further submitted that therefore, when the petitioner

association has decided that it would not hold any additional entrance test for admission, the option left to it is to admit on the basis of entrance test conducted by the State and the same is followed by the petitioner association by accepting one of the said entrance tests i.e. 12th standard, conducted for the purpose of admissions by the State. It is submitted that the petitioner association has opted for examination to which the State is giving 60% (according to the petitioner 79%) weightage for preparing merit list for admission to the government and grant in aid colleges. According to the learned advocate appearing on behalf of the petitioner association 60% of 300 Marks of three theory subjects of 12 standard and 40% of 120 marks of GUJCET are taken into consideration by the State for preparing a merit list on the basis of the same. According to him, in the merit list of State made up of in all 228 marks (i.e.180marks of 12th standard and 48 marks of GUJCET), arithmetically speaking, th component of 12 standard is having the weightage of 79% and GUJCET 21%.

17.Mr. Dave has further submitted that 12th standard examination intended to be followed by the petitioner

association is a time tested method of admission capable of fulfilling the triple test laid down in PA Inamdar and hence the same cannot be objected to by respondent No.1 admission committee particularly when the same is opted for by the unaided colleges in exercise of the right conferred upon them under Article 19(1)(g) of the Constitution. It is also further submitted that it is not the case of the respondent No.1 committee that the said 12th standard examination proposed to be followed by the petitioner association is not capable of fulfilling the said triple test.

18.Mr.Dave has also further submitted that the methodology of admissions intended to be followed by the petitioner association is aimed at seeing that the students are subjected to the less examinations to the extent possible, which is, as such, the object behind the direction in Islami Academy for entrance through association. It is also submitted that the petitioner association has given cogent reasons for following 12th standard as basis for admissions in its communications to the admission committee. It is submitted that the said reasons are not disputed by the respondent No.1 admission committee in the

impugned communication and as such the impugned communication simply proceeds on the premise that in view of the decision in the matter of PA Inamdar (supra), it is mandatory to hold entrance test and it is not permissible to grant admission solely on the basis of 12th standard.

19.Relying upon para 19 of the decision of Islamic Academy, it is submitted by Mr.Dave that the respondent No.1 admission committee has no jurisdiction to issue the directions as mentioned in the impugned communication. It is also submitted that the jurisdiction is confined to overseeing the entrance test, if any conducted by the association. Para 19 of the Islamic Academy reads as follows;

> *"19. We now direct that the respective State Government do appoint a permanent Committee which will ensure that the tests conducted by the association of colleges is fair and transparent.....The Committee shall have powers to oversee the tests to be conducted by the association. This would include the power to call for the proposed question paper/s, to know the names of the paper setters and examiners and to check the method adopted to ensure papers are not leaked. The Committee shall supervise and ensure that the test is conducted in a fair and transparent manner..."*"

20.Dealing with the contention of the respondents that the procedure for admission on the basis of 12th

standard tobe followed by the petitioner association would lead to mischief, it is submitted that when the merit list is to be prepared on the basis of result of 12th standard, there is n discretion in the hands of self financed institutions and therefore, the said apprehension is not well founded. It is further submitted that the apprehension of this nature is no ground to take away the right available to the petitioner under Article 19(1)(g) of the Constitution of India. It is further submitted that over and above the over all supervision of admission by the admission committee, the petitioner association is ready and willing to comply with the appropriate stringent conditions those may be imposed by this Court with a view eliminate any apprehension on the part of the respondents with regard to alleged mischief.

21.Mr.Dave has further submitted that the members of the petitioner association would be accepting to grant admission in the self financed engineering institutions on the basis of marks obtained in 12th standard for all the next years to come and it will not be limited only for this year. Meaning thereby they will not change their policy every year. It is further submitted

by Mr.Dave that over and above the over all supervision of the admission by the respondent committee, the petitioner association is ready and willing to comply with any condition which may be imposed by this Hon'ble Court so as to protect the interest of the meritorious students and so as to avoid the possibility of mischief by any institute.

22.Mr.Dave has further submitted that the members of the petitioner association are also ready and willing for re-shuffling once nd the admission on re-shuffling will be given strictly on the merits so that ultimately meritorious students may not have to suffer.

Making the aforesaid submissions, Mr.D.C. Dave, learned advocate appearing on behalf of the petitioner association has requested to allow the present petition by quashing and setting aside the impugned decision of the respondent No.1 admission committee dtd.31/5/2006 and consequently permit the petitioner association and its members to admit students in self financed engineering institutions on the basis of marks obtained in 12th standard examination. Meaning thereby to treat 12th standard examination conducted by the Gujarat Higher Secondary Education Board an

independent body of the State of Gujarat as an entrance test.

23.The petition is opposed by Mr.Kamal B. Trivedi, learned Advocate General appearing with Ms.Sangita Bisan, learned AGP, appearing on behalf of State as well as Mr.A.D.Oza, learned advocate appearing on behalf of the respondent No.1 admission committee.

24.Mr.A.D. Oza, learned advocate appearing on behalf of respondent No.1 Admission Committee has vehemently submitted that the decision of the admission committee dtd.31/5/2006 is in accordance with law more particularly in consonance with the judgment and observations of the Hon'ble Supreme Court in the case of PA Inamdar (supra). He has relied upon para 16 of the decision in Islamic Academy and paras 136 and 137 of the decision in the case of PA Inamdar (supra). Relying on para 16 of the decision of Islamic Education(supra), it is submitted that it is held by the Hon'ble Supreme Court that if any professional college chooses not to admit from the common entrance test conducted by the association and/or association does not what to conduct common entrance test then that self financed

institutions must necessarily admit the students from the common entrance test conducted by the State. He has also further submitted that as held by the Hon'ble Supreme Court State can also provide a procedure for holding a common entrance test in the interest of securing fair and merit based admission and preventing mal-administration and till such regulations are framed, the admission committee can oversee the admissions so as to ensure that the merit is not the casualty. He has also relied upon para para 138 of decision in the case of PA Inamdar (supra) which reads as under;

> *"138. It needs to be specifically stated that having regard to the larger interest and welfare of the students community to promote merit, achieve excellence and curb malpractice, it would be permissible to regulate admissions by providing a centralized and single window procedure, to a large extent, can secure grant of merit based admissions on a transparent basis. Till regulations are framed, the Admission Committee can over see admissions so s to ensure that the merit is not the causality.""*

He has also further submitted that the committee has power/jurisdiction to direct the petitioner association for regulating the admission process and the function of the committee is of quasi judicial nature and has power to supervise the admission procedure.

25.He has also further submitted that as per the communication of the Committee dtd.4/5/2006 and order dtd.31/5/006, it is incumbent upon the petitioner association to conduct common entrance test and for the purpose of transparent and non-exploitative method, the common entrance should be conducted by the independent agency like Education Consultant of India Ltd. (EDCIL), All India Engineering Entrance Examination (AIEEE) etc. having credibility and expertise in conducting such tests for similar type of subjects and courses as contemplated by the Hon'ble Supreme Court. He has relied upon para 136 of PA Inamdar decision which reads as under;

> *"136. Whether minority or non-minority institutions, there may be more than one similarly situated institutions imparting education in any one discipline, in any State. The same aspirant seeking admission to take eduction in any one discipline of education shall have to purchase admission forms from several institutions and appear at several admission tests conducted at different places on the same or different dates and there may be a clash of dates. If the same candidate is required to appeal in several tests, he would be subjected to unnecessary and avoidable expenditure and inconvenience. There is nothing wrong in a entrance test being held for one group of institutions imparting same or similar education. Such institutions situated in one State or in more than one State may join together and hold a common entrance test or the State may itself or through an agency arrange for holding such test. Out of such common merit list the successful candidates can be identified in chosen for being allotted to different institutions depending on te courses of study offered, the number of seats, the kind of minority to which the institution belong and other relevant factors. Such an agency conducting the common entrance test ("CET" for short) must be one enjoying utmost credibility and expertise in the matter. This would better endure the fulfillment of twin objects of transparency and merits. CET is necessary in the interest of achieving the said objectives an also for saving*

the students community from harassment and exploitation. Holding of such common entrance test followed by centralized counsellings or, in other words, single window system regulating admissions does not cause any dent in the right of minority unaided educational institutions to admit students of their choice. Such choice can be exercised from out of the list of successful candidates prepared at CET without altering the order of merit inter se of the students so chosen."

26.Relying upon the judgment of the Hon'ble Supreme Court in the case of Islamic Academy (supra) and PA Inamdar (supra), it is submitted by Mr.Oza that the petitioner association should invariably conduct the common entrance test in order to ensure admission procedure to their member institutes in fair, transparent and non-exploitative basis and therefore, the committee vide its communication dtd.4/5/2006 informed the petitioner association that the petitioner association should conduct the common entrance test under the supervision of the committee or in the alternate adopting H.S.C. Marks and GUJCET. It is also submitted that H.S.C. Result (Science Stream) was declared by the Board on 8/5/2006 i.e. almost a month back and if the instructions of the committee would have been followed by the petitioner association then the admission process on transparent basis by conducting common entrance test would have been over.

27.It is submitted that considering the para 16 of the Islamic Academic judgement and para 136 and 137 of the judgement in the case of PA Inamdar (supra), only two options are available to the petitioner association namely (i) to conduct common entrance test by the petitioner association under the supervision of the committee and (ii) in absence of common entrance test conducted by the petitioner association, the member institutions of he petitioner association have to grant admission on the basis of the common entrance test conducted as per the policy of the State Government.

28.It is submitted by Mr.Oza, learned advocate appearing on behalf of the admission committee that the HSC Examination conducted by the Gujarat Higher Secondary Board, at the best can be considered as qualifying examination and with a view to strike balance, it has been decided by the State Government that 60% marks obtained in HSC Examination obtained in HSC Examination and 40% of marks obtained in GUJCET shall have to be considered for the purpose of preparing merit list. It

is submitted that the decision is absolutely just and proper and therefore, the committee has directed the petitioner association either to follow the procedure as prescribed by the State Government for the purpose of preparing merit list or to hold their own common entrance test under the supervision of the committees. It is submitted by Mr.Oza that in fact the petitioner association has proceeded ahead with the advertisement and collection of admission forms without consulting the committee on their behalf and therefore, the committee has stepped in and as an interim measures restrained the association from proceedings further with the admission process by communication dtd.4/5/2006 and thereafter, as per direction of this Court dtd.29/5/2006, decision has been taken by the committee on 31/5/2006. It is submitted that pursuant to the order passed by this Court dtd.29/5/2006, the committee afforded an opportunity of hearing to the representative of the petitioner association and after considering the representation of the petitioner association as well as all the facts situation of the matter,the committee has taken decision which is in consonance with the observations made by the Hon'ble Supreme Court in

the case of PA Inamdar (supra). It is further submitted that the petitioner association has also not made any grievance with regard to decision making process and the impugned decision has been taken after affording an opportunity of hearing.

29.Mr.Oza has further submitted that for the academic year 2005-2006, in all 53,312 students have been appeared in Science Stream of HSC Examination. Out of those students, 51,149 students have appeared in the GUJCET. From the Central Board (CBSC) and other Boards, in all 2,990 students have appeared in GUJCET. Thus, substantial number of students have appeared in GUJCET with a clear understanding that the marks in proportion of 60:40 of the examination of HSC Examination and GUJCET respectively will be considered and therefore, the said policy cannot be altered at the instance of the petitioner association.

30.Mr.KB Trivedi, learned Advocate General has relied upon the observations made by the Hon'ble Supreme Court in para 19 of the decision of Hariyana Financial Corporation Vs. Jagdamba Oil Mill, reported in (2002) 3 SCC 496. He has relied upon para 19 of

the said judgement which reads as follows;

> *"'"....Observations of Courts are not to be read as Euclid's theorems nor as provisions of the statute. These observations must be read in the context in which they appear. Judgments of courts are not to be construed as statutes...."*

Relying upon the aforesaid observations of the Hon'ble Supreme Court, Mr.Trivedi learned Advocate General has submitted one is required to read and interpret the observations rendered in the case of TMA Pai Foundation (Supra) in the contest in which they appear. It is submitted that attempt on the part of the petitioner to emphasise that they being an association of self financed institutions, have a right to devise any method for admitting the students and for that purpose, they would be considering the marks obtained by the students as the qualifying examination of HSC Bard and will neither conduct common entrance test of their own nor will follow combination of test conducted by the HSC Board and common entrance test conducted by State (GUJCET) is absolutely illegal and contrary to the observations of the Hon'ble Supreme Court in the case of PA Inamdar (supra). It is submitted by Mr.Trivedi that undue reliance is placed on the observations made in

para 59 of the judgment in TMA Pai (supra) which were in fact with reference to determination of “merit and not determination for the “grant of admission” in the professional courses after standard XII examination. It is also submitted by him that para 68 of the judgement in TMA Pai (Supra), in fact, the Hon'ble Supreme Court qualifies as to what should be the basis for the purpose of short listing the students for admission to professional courses after standard XII examination. He has relied upon para 68 of the said judgement which reads as follows;

> *"68....It would, therefore, be permissible for university or the Government, at the time of granting recognition, to require a private unaided institution to provide for merit based selection while, at the same time, giving the management sufficient discretion in admitting students. This can done through various methods. For instance, a certain percentage of the seats can be reserved for admission by the management out of those students who have passed the common entrance test held by itself or by the State/University and have applied to the college concerned for admission, while the rest of the seats may be filled up on the basis of counseling by State agency...."”*

31.It is submitted by Mr.Trivedi that it would not be fair on the part of the petitioner association to interpret the aforesaid judgement of the Hon'ble Supreme Court in the case of TMA Pai (supra) as they like more particularly when, the Hon'ble Supreme Court itself has interpreted the said judgment initially in the

case of Islamic Academy of Education (supra) and thereafter in the case of PA Inamdar (supra). It is submitted that the Hon'ble Supreme Court has also taken note of para para 59 of the judgement of TMA Pai (supra) while observing in para 111 of the judgement of PA Inamdar (supra) that a mere observation or a reasoning leading to the formulation of the ultimate opinion on a disputed question of law cannot be read as a ratio of the decision. Relying upon the aforesaid observation, it is submitted that the one is necessarily required to cull out the ratio decidendi of the judgment of the Hon'ble Supreme Court in the case of TMA Pai in light of what is observed in the later who two judgments referred to above and any attempt to do the other way round would amount to doing violence to the Hon'ble Supreme Court's own interpretation, resulting in travesty of justice. He has relied upon para 16 of the judgement in the case of Islamic Academy of Education (supra) and question No.2 raised in the judgement in the case of PA Inamdar (supra) (para 27) as well as para 136 and 137 of the judgment in the case of PA Inamdar (supra).

Para 16 of the judgement in Islamic Academy of Education (supra) reads as under;

> *"16. …In our view what is necessary is a practical approach keeping in mind the need for a merit based selection. Paragraph 68 provides that admission by the management can be by a common entrance test held by "itself or by State/University". We thus hold that the management could select students, of their quota, either on the basis of the common entrance test conducted by the State or on the basis of a common entrance test to be conducted by an association of all colleges of a particular type in that State e.g. Medical, engineering or technical etc. The common entrance test, held by the association, must be for admission to all colleges of that type in the State. The option of choosing, between either of these tests, must be exercised before issuing of prospectus and after intimation to the concerned authority and the committee set up hereinafter. If any professional college choose not to admit from the common entrance test conducted by the association then the college must necessarily admit from the common entrance test conducted by the State. After holding the common entrance test and declaration of results the merit list will immediately be placed on the notice board of all colleges which have chosen to admit as per this test. A copy of th merit list will also be forthwith sent to the concerned authority and the committee. Selection of students must then be strictly on the basis of merit as per the merit list….""*

Para 136 and 137 of the judgement in the in the case of PA Inamdar reads as follow;

> *"136. …There is nothing wrong in a entrance test being held for one group of institutions imparting same or similar education. Such institutions situated in one State or in more than one State may join together and hold a common entrance test or the State may itself or through an agency arrange for holding such test. Out of such common merit list the successful candidates can be identified in chosen for being allotted to different institutions depending on the courses of study offered, the number of seats, the kind of minority to which the institution belong to and other relevant factors. Such an agency conducting the common entrance test ("CET" for short) must be one enjoying utmost credibility and expertise in the matter. This would better endure the fulfillment of twin objects of transparency and merits. CET is necessary in the interest of achieving the said objectives an also for saving the students community from harassment and exploitation. Holding of such common entrance test followed by centralized counsellings or, in other words, single window*

system regulating admissions does not cause any dent in the right of minority unaided educational institutions to admit students of their choice. Such choice can be exercised from out of the list of successful candidates prepared at CET without altering the order of merit inter se of the students so chosen.""

"137. …Pai Foundation has held that minority unaided institutions can legitimately claim unfertred right to chose the students to be followed admission and the procedure therefor subject to its being fair, transparent and non-exploitative. The same principle applies to non-minority unaided institutions. There may be a single institution imparting a particular type of education which is not being imparted by any other institution and having its own admission procedure fulfilling the test of being fair, transparent and non-exploitative. All the institutions imparting same or similar professional education can join together for holding a common entrance test satisfying the above triple tests. The State can also provide a procedure of holding a common entrance test in the interest of securing fair and merit-based admissions and preventing mal-administration. The admission procedure so adopted by private institution or group of institutions, if it fails to satisfy all or any of the triple tests, indicated hereinabove, can be taken over by the State substituting its own procedure. The second question is answered accordingly.""

32.It is further submitted by the learned Advocate General that the attempt on the part of the petitioner association is to treat qualifying examination of the standard 12th conducted by HSC Board as common entrance test. It is submitted that the said submission of the petitioner is misconceived and erroneous inasmuch as the concept of “qualifying examination” at the one hand and concept of “common entrance test” on the other hand are totally distinct and independent of each other, since qualifying examination is for determination of

eligibility wherein students are supposed to prepare themselves at length in theory as well as practical subjects, as against which, the common entrance test is meant for assessing the intelligence quotient of the candidates for short listing the qualified and eligible candidates in response to a limited number of seats available by testing their future ability which is based on an objective kind of test. For the purpose of scope and purview of common entrance test, the learned Advocate General has relied upon the following observations made by the Hon'ble Supreme Court in para 25 of the judgement in the case of State of MP Vs. Gopal D. Tirthani, reported in (2003) 7 SCC 83 which reads as under;

> *"25. The eligibility test, called the entrance test or the pre-PG test, is conducted with dual purpose. Firstly, it is held with the object of Assessing the knowledge and intelligence quotient of a candidate whether he would be able to prosecute postgraduate studies if allowed an opportunity of doing so; second;y, it is for the purpose of assessing the merit inter se of the candidates which is of vital significance at the conselling when it comes to allotting the successful candidates to different disciplines whether the seats are limited and some disciplines are considered to be more creamy and are more coverted than the others…""*

Learned Advocate General has also relied upon the following judgemnt of the Hon'ble Supreme Court for the purpose of distinction between “qualifying

examination" and "common entrance test" and by relying upon the aforesaid decision and the paragraphs of the said judgement, it is submitted that "qualifying examination" and and "common entrance test" are two distinct and two different premises and hence "qualifying examination" cannot by any stretch of imagination be branded to be "common entrance test";-

(i) (1971) 1 SCC 607 - para 1,5,8,9.
(State of Andhra Pradesh and another Vs. Lavu Narendranath and ors.)
(ii)AIR 1981 SC 487 – para 17.
(TMA Pai Foundation Vs. State of Karnataka)
(iii)(1999) 7 SCC 120 – para 27 & 28.
(Dr.Preeti Srivastava & Anr. vs. State of M.P. And others)

33.It is further submitted by the learned Advocate General that even otherwise for maintaining uniformity in the State at least for the students at large, it is expected of the petitioner association to follow GUJCET conducted by the HSC Board for its 17 institutions when they want to rely upon HSC Board's qualifying examination as common entrance test. This is more particularly when GUJCET is going to be one of the bases for admission in the remaining 22 institutions in the State. Unfortunately, no reasons worth the name are coming forth from the petitioner association for not following GUJCET.

34.It is also further submitted by Mr.Trivedi, learned Advocate General that some self financed institutions have surrendered their 100% seats to the State Government for doing the needful, which is obviously for the reason that thy do not want to bother themselves for the huge task of admission process. However, some self finance institutions have surrendered 75% of their total seats while keeping 25% seats with them and the same is because of the reason that the reservation policy is not to be enforced on the seats not surrendered. It is assured by the learned Advocate General that for filling up the said 25% of the seats, the self financed institutions are supposed to follow the merit list to be declared by JAC-PC which will in turn be scrutinized, approved and endorsed by the said JAC-PC(T) before sending the same for enrollment of the University concerned. It is also further submitted that the triple test laid down by the Hon'ble Supreme Court in the case of PA Inamdar (supra) will be taken care of in aforesaid eventuality.

35.Dealing with the judgement of the Hon'ble Supreme Court reported in AIR 1972 SC 1375, learned advocate appearing on behalf of the petitioner,

Mr.Trivedi, learned Advocate General has submitted that the said judgment is not applicable to the facts of the present case, as the same visualized the position as prevailing prior to the rendition of the judgment of the Hon'ble Supreme Court in the case of TMA Pai Foundation. According to the learned Advocate General, even the judgment reported in AIR 2004 SC 1861 also does not apply to the facts of the present case, since the same dealt with the controversy as to whether the State could prescribe higher percentage of the eligibility marks i.e. 60% for admission to professional courses after 12th standard when AICTE had provided 50%. It is also submitted that merely because in both the aforesaid judgements refer to the mode of admission being on the basis of the marks obtained in qualifying examination, the same cannot be cited to be precedents for the present case inasmuch as now, in view of the judgement of the Hon'ble Supreme court in the case of PA Inamdar (supra), the only choice left to the petitioner association is to choose between common entrance test to be conducted by itself or GUJCET conducted by the HSC Board. Submitting accordingly, he has requested to dismiss the present petition.

36.Meeting with the contention on behalf of the respondent that no reasons are assigned by the petitioner association for not accepting GUJCET in the combination of 12th standard on the basis of admission, Mr.Dave, learned advocate appearing on behalf of the petitioner association has submitted that in fact the petitioner vide its various representations dtd.22/9/2005, 22/10/2005 and 21/2/2006, had given cogent reasons for not accepting GUJCET. It is submitted that when the petitioner association is entitled to its own procedure for admission in exercise of the said right, the petitioner association has given reasons for not accepting the same, it is no more open for the respondents to sit in appeal over the said decision of the petitioner association. It is submitted that it is not permissible for Admission Committee or the State to thrust upon the petitioner any procedure of admission. It is further submitted that directing the petitioner Association to grant admission on the basis of admission process adopted by the State would amounting to thrusting process of admission upon the unaided colleges. It is submitted by the learned advocate appearing on behalf of the

petitioner association that reliance placed by the respondents on the decision in the judgement reported in (1971) 1 SCC 607 (supra) is absolutely unwarrantaed inasmuch as in the said decision, the Hon'ble Supreme Court was concerned with the right of the concerned University under the relevant statute vis-a-vis the right of the State to insist for common entrance test in th discipline of medicine, where for the purpose of admissions, a common merit list was prepared combining the result of different Boards taking qualifying examinations. Similarly, according to Mr.Dave, learned advocate appearing on behalf of the petitioner association, the other decision in the case of Ajay Hansia, reported in AIR 1981 SC 487 and in the case of Dr.Preeti Srivastava, reported in (1999)7 SCC 120 are also not applicable to the facts of the present case, as in the said decision there is no combined merit list for both the Boards of 12th standard, they do support the contention of the petitioner association that there is nothing wrong in preparing merit list on the basis of 12th standard examination. Mr.Dave has also submitted that the judgement of the Hon'ble Supreme Court in the case of Gopal D. Tirthani, reported in

(2003) 7 SCC 83 : AIR 2003 SC 2952 relied upon by the respondents also would not be applicable to the present case, as in the said decision, the Hon'ble Supreme Court was concerned with the situation whereunder, for post graduate admissions in medicine, two separate entrance tests were undertaken for in service candidates and the open category candidates and when the said practice was questioned on the basis of regulation of MIC, the Hon'ble Supreme Court ruled that it would be proper to have one common entrance test rather than two entrance tests. Meeting with the submissions of the learned Advocate General that few self financed institutions have surrendered 75% of the seats and kept with them 25% seats and therefore, there is no reason for the petitioner Association and their members not to accept the procedure adopted by the respondent No.1 Admission Committee, Mr.Dave has submitted that merely because 2 to 3 self financed institutions have surrendered 75% seats, the same is no ground to surrender seats by other institutions. It is also further submitted by him that according to the information of he petitioner association those 2 to 3 institutions have surrendered 75% of the seats, as

there is an understanding that so far as remaining 25% seats are concerned, it will be open for those institutions to grant admission as they like and there will not be any restriction.

Submitting accordingly, Mr.Dave learned advocate appearing on behalf of the petitioner association has requested to allow the present petition and grant the relief as prayed for and to allow the petitioner association to grant admission in 1st year self financed engineering in self financed institutions on the basis of marks obtained in HSC Examination, rather than to burden the students of one more examination.

37.Heard the learned advocates appearing on behalf of the respective parties.

38.Having heard the learned advocates and on going thorough the impugned decision dtd.31/5/2006 of the respondent No.1 Admission Committee it appears that while directing the petitioner association to conduct the common entrance test separately or in the alternate should follow the concerned entrance

test conducted by the State over and above standard 12th examination in science stream, the admission committee has solely relied upon the observations made by the Hon'ble Supreme Court in the decision of PA Inamdar (supra) and it is observed by the admission committee that “common entrance test” as contemplated by the Hon'ble Supreme Court cannot be considered as 12th standard examination conducted by the Gujarat Higher Secondary Board. It is required to be noted at this stage that it was proposed by the petitioner Association that Self Financed Institutions will be granting admission in 1st year engineering self financed institutions in engineering on the basis of marks obtained in standard 12th examination conducted by the Gujarat Higher Secondary Education Board an they do not want to conduct a separate entrance test. Meaning thereby, the 12th standard examination conducted by the HSC Board itself to be treated as entrance test and to that admission committee has taken the aforesaid decision. Therefore, the question which arises for consideration of this Court is as to whether the decision of the Hon'ble Supreme Court in the case of PA Inamdar (supra) directs that 12th standard

examination conducted by the HSC Board cannot be considered as entrance test and that association of self financed institutions is required to conduct a common entrance test over and above the 12th standard examination conducted by the HSC Board. The question which arises for consideration of this Court in the present petition is as to whether is it open and/or permissible for the petitioner association to grant admission in 1st year self financed engineering institutions on merits on the basis of marks obtained in 12th standard only which may be considered as a common entrance test. The another question which arises in this petition is as to whether is it within the jurisdiction of the admission committee to impart the direction of the aforesaid nature which according to the petitioner association is having virtually effect of thrusting admission process upon the self financed institutions? The next question which arises is what is meant by the “common entrance test”? and whether qualified examination can be treated as entrance test or not?.

39.Learned advocate appearing on behalf of the parties have mainly relied upon the judgments of the Hon'ble

Supreme Court in the case of TMA Pai Foundation (supra), Islamic Academy of Education (supra) and PA Inamdar (supra). As held by the Hon'ble Supreme Court in the case of Hariyana Financial Corporation (supra), the observations of the courts are not to be read as Euclid's theorems nor as provisions of the statute and the observations must be in the context in which they appear and the judgments of the courts are not to be construed as statutes. Considering the said ratio laid down by the Hon'ble Supreme Court one is required to read and interpret the observations made by the Hon'ble Supreme Court in the cases of TMA Pai Foundation, Islamic Academy of Education and PA Inamdar (supra) in the context they appear. Therefore, first of all one has to appreciate how and for what the matter was referred to the bench of seven judges and what were the issues before the Hon'ble Supreme Court in the case of PA Inamdar. It appears from the order passed by the Hon'ble Supreme Court that when the matter was referred to seven judges bench, two questions had arisen namely (i) fixation of quota of admission / students in respect of unaided professional institutions and (ii) as to who should hold the

entrance examination for admission into the said institutions. The issue with regard to holding of common entrance test was referred considering para 16 of the judgment in the case of Islamic Academy. It appears from the aforesaid judgments that the question had arisen whether each individual self financed institutions can be permitted to have a separate common entrance test or common entrance test to be conducted by an association of all colleges of a particular type in their State. In para 16 in Islamic Academy's case, the Hon'ble Supreme Court considered the issue with regard to holding of common entrance test. Para 16 of the said judgement reads as follows;

> *"16.…In our view what is necessary is a practical approach keeping in mind the need for a merit based selection. Paragraph 68 provides that admission by the management can be by a common entrance test held by "itself or by State/University". We thus hold that the management could select students, of their quota, either on the basis of the common entrance test conducted by the State or on the basis of a common entrance test to be conducted by an association of all colleges of a particular type in that State e.g. Medical, engineering or technical etc. The common entrance test, held by the association, must be for admission to all colleges of that type in the State. The option of choosing, between either of these tests, must be exercised before issuing of prospectus and after intimation to the concerned authority and the committee set up hereinafter. If any professional college choose not to admit from the common entrance test conducted by the association then the college must necessarily admit from the common entrance test conducted by the State. After holding the common entrance test and declaration of results the merit list will immediately be placed on the notice board of all colleges which have chosen to admit as per this test. A copy of th merit list will also be forthwith sent to the concerned*

authority and the committee. Selection of students must then be strictly on the basis of merit as per the merit list…."”

Para 11 of the order in PA Inamdar and other Vs. State of Maharashtra and others reported in (2004) 8SCC 139, by which the matter was referred to the larger bench (Seven Judges Behcn) reads as under;

"11. The necessity of forming the association was by reason of the following sentences in Islamic Academy case ; (SCC P.728, para 6).

“In our view what is necessary is a practical approach keeping in mind the need for a merit based selection. Paragraph 68 provides that admission by the management can be by a common entrance test held by “itself” or by the State/University”. The words “common entrance test” clearly indicate that each institute cannot hold a separate test. We thus hold the management could select students, of their quota, either on the basis of a common entrance test conducted by the State or on the basis of a common entrance test to be conducted by an association of all colleges of a particular type in that State e.g. Medical, engineering or technical etc. The common entrance test, held by the association, must be for admission to all colleges of that type in the State."

At this stage, para 26 of the decision in PA Inamdar is required to be referred to which reads as follows;

"26. These matters have been directed to be placed for hearing before a Bench of seven Judges under orders of the Chief Justice of India pursuant to the order dated 15/5/2004 in P.A. Inamdar Vs. State of Maharashtra and order dtd.29/7/2004 in Pushpagiri Medical Society Vs. State of Kerala. The aggrieved persons before us are again classifiable in one class, that is, unaided minority and non-minority institutions imparting professional education. The issues arising for decision before us are only three;

(i) the fixation of “quota” of admission/students in respect of unaided professional institutions;

(ii) the holding of examinations for admissions to such

colleges, that is, who will hold the entrance tests; and

(iii) the fee structure."

Thus, issues before the Hon'ble Supreme court in PA Inamdar case, more particularly issue No.2 was with regard to holding of examination for admission to such Self Finaced Institutions / colleges i.e. who will hold the entrance test. It appears from the judgement of the Hon'ble Supreme Court in PA Inamdar (supra) that the said issue arose on account of the fact that some of the colleges which did not join the association of self financed colleges claimed right to hold separate entrance test, relying upon the decision of the Hon'ble Supreme Court in TMA Pai Foundation (Supra). Therefore, it appears that the issue posed before the Hon'ble Supreme Court for consideration in PA Inamdar (supra) was, who should hold the common entrance test? e.g. Whether any individual colleges can be permitted to conduct common entrance test separately or by the association of he management. At this stage para 27 of the judgment in PA Inamdar (supra) and the questions framed by the Hon'ble Supreme Court on the basis of the

reference is required to be considered. The question No.2 which is relevant for the purpose of present petition reads as follows;

> *"Whether unaided (minority and non-minority) educational institutions are free to device their own admission procedure or whether the directions made in Islamic Academy for compulsory holding an entrance test by the State or an association of institutions and to choose there from the students entitled to admission in such institutions, can be sustained in light of th law laid down in TMA Pai Foundation?".*

The question No.2 is answered by the Hon'ble Supreme Court in PA Inamdar (supra) in paras 136, 137 and 138 which are reproduced hereinbelow;

> *"136. …There is nothing wrong in a entrance test being held for one group of institutions imparting same or similar education. Such institutions situated in one State or in more than one State may join together and hold a common entrance test or the State may itself or through an agency arrange for holding such test. Out of such common merit list the successful candidates can be identified in chosen for being allotted to different institutions depending on the courses of study offered, the number of seats, the kind of minority to which the institution belong and other relevant factors. Such an agency conducting the common entrance test ("CET" for short) must be one enjoying utmost credibility and expertise in the matter. This would better endure the fulfillment of twin objects of transparency and merits. CET is necessary in the interest of achieving the said objectives an also for saving the students community from harassment and exploitation. Holding of such common entrance test followed by centralized counsellings or, in other words, single window system regulating admissions does not cause any dent in the right of minority unaided educational institutions to admit students of their choice. Such choice can be exercised from out of the list of successful candidates prepared at CET without altering the order of merit inter se of the students so chosen."*

> *"137. …Pai Foundation has held that minority unaided institutions can legitimately claim unfertred right to chose*

the students to be followed admission and the procedure therefor subject to its being fair, transparent and non-exploitative. The same principle applies to non-minority unaided institutions. There may be a single institution imparting a particular type of education which is not being imparted by any other institution and having its own admission procedure fulfilling the test of being fair, transparent and non-exploitative. All the institutions imparting same or similar professional education can join together for holding a common entrance test satisfying the above triple tests. The State can also provide a procedure of holding a common entrance test in the interest of securing fair and merit-based admissions and preventing mal-administration. The admission procedure so adopted by private institution or group of institutions, if it fails to satisfy all or any of the triple tests, indicated hereinabove, can be taken over by the State substituting its own procedure. The second question is answered accordingly.""

"138. It needs to be specifically stated that having regard to the larger interest and welfare of th students community to promote merit, achieve excellence and curb malpractice, it would be permissible to regulate admissions by providing a centralized and single-window procedure. Such a procedure, to a large extent, can secure grant of merit-based admissions on a transparent basis. Till regulations are framed, the Admission Committees can oversee admissions so as to ensure that merit is not the casualty.""

At this stage para 16 of the judgement of the Hon'ble Supreme Court in Islamic Academy of Education clarifying TMA Pai judgement (supra) is required to be considered which reads as under;

"16. ...In our view what is necessary is a practical approach keeping in mind the need for a merit based selection. Paragraph 68 provides that admission by the management can be by a common entrance test held by "itself or by State/University". We thus hold that the management could select students, of their quota, either on the basis of the common entrance test conducted by the State or on the basis of a common entrance test to be conducted by an association of all colleges of a particular type in that State e.g. Medical, engineering or technical etc. The common entrance test, held by the association, must be for admission to all colleges of that type in the State. The option of choosing, between either of these tests, must be exercised before issuing of prospectus and after intimation to the concerned authority and the committee set up hereinafter. If any professional college choose not to admit from the common entrance test conducted by the association then the college must necessarily admit from the common entrance

test conducted by the State. After holding the common entrance test and declaration of results the merit list will immediately be placed on the notice board of all colleges which have chosen to admit as per this test. A copy of the merit list will also be forthwith sent to the concerned authority and the committee. Selection of students must then be strictly on the basis of merit as per the merit list...."".

At this stage para 20 of the judgement in the case of PA Inamdar is also required to be considered, which reads as under;

"20. Before we embark upon dealing with the issues posed before us for resolution, we would like to make a few preliminary objections as a preface to our judgment inasmuch as that would outline the scope of the controversy with which we are actually dealing her. At the very outset, we may state that out task is not to pronounce our own independent opinion on the several issues which arose for consideration in Pai Foundation. Even if we are inclined to disagree with any of the finding amounting to declaration of law by the majority in Pai Foundation we cannot; that being a pronouncement by an eleven Judge Bench, we are bound by it. We cannot express dissent or disagreement howsoever we may be inclined to do so on any of the issues. The real task before us is to cull out the ratio decidendi of Pai Foundation and to examine if the explanation or clarification given in Islamic Academy runs counter to Pai Foundation and if so, to what extent. If we find anything said or held in Islamic Academy in conflict with Pai Foundation we shall say so as being a departure from th law laid down by Pai Foundation and on the principle of binding efficacy of precedents, overrule to that extent the opinion of the Constitution Bench in Islamic Academy.""

40.In para 59 of the judgement in TMA Pai Foundation (supra), the Hon'ble Supreme Court has observed that merit is usually determined for admission to professional and higher educational qualification by either marks that the students obtains in qualifying examination or School Leaving Certificate stage

followed by interview or by common entrance test conducted by the institution, or in the case of professional colleges, by government agencies. In para 68, the Hon'ble Supreme Court has further observed that unaided professional institutions are entitled to autonomy in their administration while, at the same time they do not forgo or discard principle of merit. It would, therefore, be permissible for the university or government at the time of granting recognition, to require a private unaided institution to provide for merit based selection while, at the same time, giving the management sufficient discretion in admitting students. In para 68 the Hon'ble Supreme Court observed that admission by the management can be by common entrance test held by itself or by the State/University. The question as to how the management of both the minority and non-minority professional colleges, can admit th students in th college allotted to them further came to be considered by the Hon'ble Supreme Court in Islamic Academy (supra) and in para 16 the Hon'ble Suprme Court observed that majority judgement in TMA Pai case provides that in professional colleges admission must be on merits and it is further observed by the

Hon'ble Supreme Court that if a student is required to appear at more than one entrance test, it would lead to a great hardship. The application fees charged by each institute even though they may be only Rs.500 to Rs.1000 for each institute, it imposes a heavy burden on the student who will necessarily have to apply to a number of colleges. It is further observed by the Hon'ble Supreme Court that the students would have to arrange for transport from and to and stay various places if they have to appear in individual test conducted by each college. If a student has to go for test to each institute, it is possible that he/she may not be able to reach, in time, venue of test of a particular institute. With reference to the above context, the Hon'ble Supreme Court further observed that in our view what is necessary is a practical approach keeping in mind the need for merit based selection." Considering para 68 of the judgement of the Hon'ble Supreme Court in TMA Pai case, the Hon'ble Supreme Court in Islamic Academy (supra) has further observed as under;

> *"The words "common entrance" clearly indicate that each institute cannot hold a separate test. We thus hold that the management could select students, of their quota, either on the basis of the common entrance test conducted by the*

State or on the basis of a common entrance test to be conducted by an association of all colleges of a particular type in that State e.g. medical, engineering or technical etc. The common entrance test, held by the association, must be for admission to all colleges of that type in the State. The option of choosing, between either of these tests, must be exercised before issuing of prospectus or after intimation to the concerned authority and the committee set up hereinafter. If any professional college chooses not to admit from the common entrance test conducted by the association then that college must necessarily admit from the common entrance test conducted by the State. After holding the common entrance test and declaration of results the merit list will immediately be placed on the notice board of all colleges which have chosen to admit as per this test. A copy of the merit list will also be forthwith sent to the concerned authority and the Committee. Selection of students must then be strictly on the basis of merit as per that merit list. Of course, as indicated earlier, minority colleges will be entitled to fill up their quota with their own students on the basis of inter se merit amongst those students. The list of students admitted along with the rank number obtained by the students, the fees collected and all such particulars and details as may be required by the concerned authority or the Committee must be submitted to them forthwith. The question paper and the answer papers must be preserved for such period as the concerned authority or Committee may indicate. If it is found that any student has been admitted dehors merit, penalty can be imposed on that institute and in appropriate cases recognition/affiliation may also be withdrawn."

Now considering para 68 of the decision in TMA Pai (supra), para 16 of the judgment in Islamic Academy (supra) one of the question / issue was referred to seven judges bench in PA Inamdar and issue No.2 came to be framed which is stated herinabove and to that the Hon'ble Supreme Court in PA Inamdar (supra) in para 136 and 137 held and observed with regard to holding of common entrance test.

Considering the above facts, it is clear that before

the Hon'ble Supreme Court in PA Inamdar (supra), the question which arose for consideration was with regard to holding of a common entrance test i.e. who should hold the common entrance test e.g. Whether individual institution can be permitted to conduct the entrance test individually or common entrance test should be conducted by the association and considering the above issue the Hon'ble Supreme Court made certain observations with regard to common entrance test. Therefore, the question which has arisen in the present petition i.e. whether when the association of the management wants to admit students on the basis of the marks obtained in standard 12th examination without holding any additional common entrance test and to treat the 12th standard examination conducted by the HSC Board itself as entrance test, is it permissible or not? and considering the above issue, which has arisen in the present petition, and considering the above three decisions of the Hon'ble Supreme Court, it appears that the Hon'ble Supreme Court has never directed in PA Inamdar (supra) that the association of self financed institutions must conduct common entrance test over and above standard 12th examination conducted by the State agency when the

association wants to grant admission on merits on the basis of the marks obtained in standard 12th examination. Therefore, the decision of the admission committee to direct th petitioner association to conduct common entrance test over and above standard 12th examination or in the alternate to grant admission considering the marks obtained in standard 12th and GUJCET i.e. as per the procedure adopted by the State quota for admission in government aided institutions, relying upon the decision in PA Inamdar (supra) is misinterpreting the observations made by the Hon'ble Supreme Court in para 136 and 137. On consideration of the observations and directions made by the Hon'ble Supreme Court in para 136, 137 and 138, it is observed by the Hon'ble Supreme Court that the object of common entrance test would be to achieve the object of transparency and merits and CET is necessary in the interest of achieving the aforesaid objectives nd also for savings and community from harassment and exploitation and holding such common entrance test must be followed by the centralized counselling or other words single window system regulating admission. Thus, emphasises by the Hon'ble Supreme Court with regard to the common entrance test was to achieve

the procedure in a fair, transparent and non-exploitative manner. It is also held by the Hon'ble Supreme Court that the State can also provide procedure for holding a common entrance test in the interest of securing fair and merit base admission and to prevent mal administration and when the admission procedure so adopted by private institution or group of institutions, if it fails to satisfy all or any of the triple test i.e. fair, transparent and non-exploitative then in that case, the same can be taken over by the State substituting its own procedure.

Therefore, considering the decision of the Hon'ble Supreme Court of TMA Pai, Islamic Academy and PA Inamdar (supra), Mr.Dave learned advocate appearing on behalf of the petitioner association is right in his submission that the issue which has arisen in the present petition, was not before the Hon'ble Supreme Court and there is no direction from the Hon'ble Supreme Court that the Association of Self Financed Institutions must conduct common entrance test over and above standard 12th examination conducted by the HSC Board when the self financed institutions want to give admission on merit on the basis of the

marks obtained in standard 12th examination conducted by HSC Board, meaning thereby standard 12th examination conducted by the HSC Board as entrance test.

41.Now, in view of the above facts and the findings by this Court, what is required to be now considered is what is meant by common entrance test and the purpose for conducting the common entrance test.

In para 68 of the decision in TMA Pai (supra), The Hon'ble Supreme considered the question with regard to the rights of the unaided professional institutions and it is observed by the Hon'ble Supreme Court that unaided professional institutions are entitled to autonomy in their administration while, at the same time, they should not forgo or discard the principle on merits and therefore, it would be permissible for the University or the Government at the time of granting recognition to require private unaided institutions to provide for merit based selection while, at the same time, giving management sufficient discretion in admitting the students. It appears that thereafter, further issue arose and the

some minority self financed institutions were of the opinion that they are entitled to conduct common entrance test individually college-wise and the said question came to be considered further by the Hon'ble Supreme Court in the case of Islamic Academy (supra) and as to how the management of both, minority and non-minority professional colleges can admit students came to be considered in para 16 of the said judgment and it is observed by the Hon'ble Supreme Court that if a student is required to appear at more than one entrance test, it would lead to great hardship. The application fees charged by each institute, would impose a heavy burden on the students who will necessarily will have to apply to a number of colleges and the students would have to arrange for transport from and to and stay at various places if they have to appear for individual tests conducted by each college. It is also further observed by the Hon'ble Supreme Court that if a student has to go for test to each institute, it is possible that he/she may not be able to reach in time venue of test of a particular institute and with reference to the same, the Hon'ble Supreme Court has further observed and held that what is necessary

is practical approach keeping in mind the need for merit based selection. Considering para 68 of the judgment in TMA Pai (supra) by which the Hon'ble Supreme Court observed that the admission by the management can be by a common entrance test held by “itself or by the State/University”, the Hon'ble Supreme Court also further observed in para 16 of the Islamic Academy (supra) that the words “common entrance test” clearly indicate that each institute cannot hold a separate test and ultimately, the Hon'ble Supreme Court held that th management should select students of their quota either on the basis of common entrance test conducted by the State or on the basis of common entrance test conducted by an association of all the colleges of a particular type in their State e.g. Medical, engineering or technical etc. and the common entrance test held by the association must be for admission to all the colleges of that type in the State. It is also further held by the Hon'ble Supreme Court that the option of choosing between either of these tests, must be exercised before issuing of prospectus and after intimation to the concerned authority and the committee. Thus, the Hon'ble Supreme Court

emphasized that the selection of the students must be strictly on the basis of merit. The aforesaid para 16 further came to be considered by the Hon'ble Supreme Court in PA Inamdar (supra) on a reference to seven judges bench as stated above and the question NO.2 came to be framed by the Hon'ble Supreme Court that whether unaided (minority and non-minority) education institution are free to device their own admission procedure or whether the directions made in Islamic Academy for compulsory holding an entrance test by th State or Association of institution and to choose therefrom the students entitled to admission in such institutions can be sustained in light of the law laid down in TMA Pai Foundation? The said question No.2 came to be answered by the Hon'ble Supreme Court in PA Inamdar (supra) in para 136 of the said judgment. Para 136, 137 and 137 of the judgment in the case of PA Inamdar reads as under;

> *"136. Whether minority or non-minority institutions, there may be more than one similarly situated institutions imparting education in any one discipline, in any State. The same aspirant seeking admission to take education in any one discipline of education shall have to purchase admission forms from several institutions and appear at several admission tests conducted at different places on the same or different dates and there may be a clash of dates. If the same candidate is required to appear in several tests, he would be subjected to unnecessary and avoidable*

expenditure and inconvenience. There is nothing wrong in a entrance test being held for one group of institutions imparting same or similar education. Such institutions situated in one State or in more than one State may join together and hold a common entrance test or the State may itself or through an agency arrange for holding such test. Out of such common merit list the successful candidates can be identified and chosen for being allotted to different institutions depending on the courses of study offered, the number of seats, the kind of minority to which the institution belongs and other relevant factors. Such an agency conducting the common entrance test ("CET" for short) must be one enjoying utmost credibility and expertise in the matter. This would better endure the fulfillment of twin objects of transparency and merits. CET is necessary in the interest of achieving the said objectives and also for saving the students community from harassment and exploitation. Holding of such common entrance test followed by centralized counselling or, in other words, single window system regulating admissions does not cause any dent in the right of minority unaided educational institutions to admit students of their choice. Such choice can be exercised from out of the list of successful candidates prepared at CET without altering the order of merit inter se of the students so chosen.""

"137. ...Pai Foundation has held that minority unaided institutions can legitimately claim unfetered right to chose the students to be followed admission and the procedure therefor subject to its being fair, transparent and non-exploitative. The same principle applies to non-minority unaided institutions. There may be a single institution imparting a particular type of education which is not being imparted by any other institution and having its own admission procedure fulfilling the test of being fair, transparent and non-exploitative. All the institutions imparting same or similar professional education can join together for holding a common entrance test satisfying the above triple tests. The State can also provide a procedure of holding a common entrance test in the interest of securing fair and merit-based admissions and preventing mal-administration. The admission procedure so adopted by private institution or group of institutions, if it fails to satisfy all or any of the triple tests, indicated hereinabove, can be taken over by the State substituting its own procedure. The second question is answered accordingly.""

"138. It needs to be specifically stated that having regard to the larger interest and welfare of the students community to promote merit, achieve excellence and curb malpractice, it would be permissible to regulate admissions by providing a centralized and single window procedure. Such a procedure, to a large extent, can secure grant of merit based admissions on a transparent basis. Till regulations are framed, the Admission Committee can oversee admissions so as to ensure that the merit is not the casuality.""

Thus, considering the aforesaid 3 judgments of the

Hon'ble Supreme Court in the case of TMA Pai, Islamic Academy and PA Inamdar (supra) what emerges is that the Hon'ble Supreme Court emphasized that the selection of students / admission by the unaided professional institutions must be on the basis of merit as per the merit list and admission procedure adopted by the private institution or a group of institutions must satisfy all or any of the triple test i.e. fair, transparent and non-exploitative. The Hon'ble Supreme Court has also observed and held that it would be permissible to regulate admissions by providing a centralized and single window procedure.

42.Now it is required to be considered that what is meant by the common entrance test. The aim and object for conducting the common entrance test was to apply a common yardstic and to prepare a merit list for the purpose of admission in a situation where common or composite merit list for admission were prepared on the basis of qualifying examination undertaken by the different bodies and considering the contentions that it would be against the concept of equality under Article 14 of the Constitution of

India. To have a common merit list of those who are not alike having passed qualifying examination from different Boards and therefore, need was felt to have a common entrance test for all those students who have passed their qualifying examination undertaken by different boards so that equal opportunity can be given to all the students. Now, therefore, considering the aim and object for holding common entrance test, the facts and the issue arise in the present petition are required to be considered.

In the State of Gujarat, standard 12th examination is conducted by the Gujarat Higher Secondary Board and the same is common to all. The credibility of the examination of standard 12th conducted by the HSC Board is not doubted by the respondent No.1 Admission Committee. Those persons who passed the examination of standard 12 from HSC Board are eligible to get admission in 1st year engineering course. So far as students who have passed their standard 12 examination from CBSC is concerned, there is separate quota so far as the Government State is concerned. Therefore, there is no question of considering their cases along with the students who have passed 12th

standard examination from HSC Board and therefore, for the purpose of admission in 1st year engineering course all those students those who have passed 12th standard examination from HSC Board will be considered equally. It is not in dispute that the self financed institutions have got their autonomy so far as admission procedure and administration are concerned and those rights are recognized by the Hon'ble Supreme Court in various decisions. As the same is not disputed, this court is not referring to those judgments. As per the decision of the Hon'ble Supreme Court, it is for the self financed institutions to evolve their own procedure for admission. However, only thing is that the selection of students must be on merit basis and the procedure must be fair, transparent and non-exploitative and there should be single window system so that the students may not have to suffer. Now, while exercising their rights of adopting their own procedure for admission, the petitioner association and its members have decided to grant admission on merits on the basis of the marks obtained in standard 12th examination conducted by the HSC Board and to treat the said examination as entrance test so as not to burden the students of one another entrance test. It is

also further provided that the admission would be on single window system and the said procedure is mentioned in the prospectus. It is required to be noted that right from beginning i.e. from July 2005, the petitioner association approached the respondent Committee nd informed that for the academic year 2006-2007, they propose to give admission on the basis of the marks obtained in 12th standard examination conducted by the HSC Board, without holding a separate common entrance test. However, there was no response from the respondent Admission Committee till March, 2006 and for the first time the respondent Admission Committee informed the petitioner association to conduct a separate common entrance test. It is required to be noted that even according to the learned advocate appearing on behalf of the respondent Admission Committee, communication in the month of March, 2006 was not a final decision and therefore, a request was made on 29/5/2006 when the present petition was heard to allow the respondent Admission Committee to take a decision and accordingly, the respondent No.1 Admission Committee has taken the final decision vide impugned communication dtd.31/5/2006, by which the respondent

No.1 Admission Committee has directed the petitioner association to hold separate common entrance test, failing which admission to be granted adopting the procedure of the State Government for State quota i.e. 60% of the marks obtained in 12th standard examination conducted by HSC Board and 40% of the marks obtained in GUJCET (Common Entrance Test held by the State). It is required to be noted that the the respondent petitioner association has clearly submitted that the admission will be strictly on the merits on the basis of marks obtained in 12th standard examination conducted by the HSC Board. The said procedure be supervised and monitored by the respondent No.1 admission committee. There shall be re-shuffling once and there shall be single window system. It is also required to be noted at this stage that there is no allegation by the respondent No.1 admission committee in the impugned decision dtd.31/5/2006 that the procedure for admission will not satisfy the triple test as decided by the Hon'ble Supreme Court i.e. fair, transparent and non-exploitative. It is also required to be noted at this stage that even the State Government itself so far as its quota and Government-Aided Institutions are concerned, would be granting admission

on the basis of 60% marks (according to the petitioner Association it would be 79.20%) obtained in the very 12th standard examination conducted by the HSC Board, against which, the petitioner association proposes to grant admission on the basis of 100% marks obtained in 12th standard examination conducted by the HSC Board. Therefore, so far as even the State Government is concerned, they have no objection in even considering the marks obtained in 12th standard examination conducted by HSC Board, but so far as the State Government is concerned, they will consider 60& of marks of the said 12th standard examination. Therefore, the credibility and credentiality of 12th standard examination conducted by HSC Board is not doubted. As stated hereinabove, the impugned decision is taken by the respondent No.1 Admission Committee solely relying upon the judgement of the Hon'ble Supreme Court in the case of PA Inamdar (Supra) and as stated hereinabove, the issue which is in the present case, was not before the Hon'ble Supreme Court in PA Inamdar (supra). The issue involved in the present petition and the issue involved in the decision of PA Inamdar (supra) both are quite different.

43.Therefore, as stated hereinabove and even not disputed by the respondent admission committee that it is well within the rights of the self financed institutions to evolve their own procedure for admission. In a case where there are more qualifying examinations by the different Boards and unequals are not treated equally and with a view to see that equal opportunity is given to one and all, it was felt necessary to have a common entrance test and that too not individually by the self financed institutions but by a group of institutions and/or association of self financed institutions of a same or similar type and that too by providing a centralized and single window system so that the students may not have to suffer. With a view to see that the students may not be burdened of one more examination, a decision has been taken by the petitioner association and respective self financed institutions that instead of conducting one another entrance test, the examination of 12th standard conducted by the Gujarat Higher Secondary Examination Board itself be treated as entrance test and the admission to be given strictly on merits on the basis of merit list prepared and the entire procedure to be supervised

and monitored by the respondent No.1 admission committee and not only that, only after their approval, the students can be enrolled. Therefore, it cannot be said that such procedure is in any way contrary to the observations of the Hon'ble Supreme Court in PA Inamdar (Supra). The only thing which is required to be observed is that such procedure must satisfy all or any of the triple test i.e. being fair, transparent and non-exploitative and it must be centralized and single window system. It is required to be noted that the learned advocate appearing on behalf of the petitioner association has submitted that over and above what is stated hereinabove i.e. the entire admission procedure to be supervised and monitored by the respondent No.1 admission committee; the students will be enrolled only after the approval of the respondent No.1 admission committee and the entire procedure would be centralized and single window system, he has submitted that any other stringent conditions also can be imposed by this Court upon the petitioner association with a view to avoid any chance of mal practice or to ensure that the merit is not casualty. As stated hereinabove, it is not the case of the

respondent No.1 admission committee in the impugned decision dtd.31/5/2006 that by the aforesaid procedure, fair, transparent and non-exploitative test will not be satisfied.

44.Learned advocate appearing on behalf of th respondents have heavily relied upon the observations made in para 136, and 137 of the judgment in the case of PA Inamdar (supra) which are reproduced hereinabove, and relying upon the same, it is submitted that holding of common entrance test by the association / self financed institution is must. It is required to be noted that as held by the Hon'ble Supreme Court in the case of Hariyana Financial Corporation (supra), the observations and/or the judgment is required to be read in the context in which they appear. As stated hereinabove, the observations of the Hon'ble Supreme Court in the aforesaid paras of the judgment in PA Inamdar (supra) are with reference to the controversy as to whether any individual unaided institute can be permitted to conduct common entrance test separately or not and in that context, the Hon'ble Supreme Court has made observation with regard to

holding of common entrance test by association of the self financed institution or group of institutions and observed that the said admission procedure should satisfy the triple tests i.e. it should be fair, transparent and non-exploitative. Therefore, what is required to be considered is that admission procedure by the petitioner Association for the purpose of admission must satisfy the aforesaid triple tests and admission must be based on merits only. As stated above, by permitting the petitioner association and/or the members of the petitioner association i.e. self financed institutions in engineering to admit students on merits considering the marks obtained in 12th standard examination conducted by HSC Board, under the supervision and monitoring of the respondent No.1 admission committee by a centralized and single window procedure and with appropriate conditions which are imposed by this court hereinafter, the said procedure would certainly satisfy the triple tests as laid down by the Hon'ble Supreme Court in PA Inamdar (supra) i.e. the said procedure would be fair, transparent and non-exploitative and it will ensure that the merits will not be casualty.

45.It is the contention on behalf of the learned Advocate General that no cogent reasons have bee given by the petitioner association for not following GUJCET. It is required to be noted that as held by the Hon'ble Supreme Court in TMA Pai, Islamic Academy and PA Inamdar (supra), it is well within the rights of the management and all self financed institutions would have autonomy to evolve their own procedure for admission subject to satisfying the triple tests i.e. it should be fair, transparent and non-exploitative. Therefore, by making the aforesaid submissions, it will be thrusting upon the petitioner association and the self financed institutions to follow the GUJCET i.e. common entrance test conducted by the State Government, which is not permissible. It is ultimately for the self financed institutions to evolve its own procedure for admission subject to compliance of the condition that may be imposed by this court and the merits is not given go-bye. If any procedure for admission which is found fair, transparent and non-exploitative and the admission are given on merit base and it is by centralized single window system, it is well within the right of the self financed institutions to evolve such procedure. As stated hereinabove,

even the respondent No.1 admission committee and the State Government will be giving admission in the Government/Aided Colleges considering the marks obtained by a student in 12th standard examination conducted by the HSC Board, however, to the extent of 60%, against which, th petitioner association will be giving weightage to the said examination of standard 12th conducted by HSC Board to the extent of 100%. It is also required to be noted that it is not correct that no reasons are given by the petitioner association. However, as stated hereinabove, it is immaterial, as it is well within the domine of the self financed institutions to follow or not to follow the GUJCET and even as conceded by the learned Advocate General, nobody can thrust the common entrance test conducted by State for Government-Aided College upon the self financed institutions.

46.The next submission on behalf of the respondents is that the 12th standard examination conducted by the HSC Board at the most can be considered as qualifying examination and cannot be termed as common entrance test. It is required to be noted at

this stage that the aim and object for holding common entrance test is to see that equal treatment is given to all students who have passed 12th standard examination from different Boards so that unequal are not treated equally. As stated hereinabove, it is ultimately for the self financed institutions and their association to have their own admission procedure subject to satisfying the aforesaid triple test with certain conditions. Therefore, according to the respondents over and above the qualifying examination, if one another examination is taken then and then only it can be said to be common entrance test, which can not be accepted. The relevant consideration would be that there must be common entrance test to all for the purpose of granting admission and it might be that when there is only one board taking examination of standard 12 and marks obtained by all the students in the said examination conducted by one board are considered for the purpose of admission, it can be considered as common entrance test. It is not that over and above the 12th standard examination, if one another examination is taken only in that case it can be considered as common entrance test.

47.The learned Advocate General has relied upon the decision of the Hon'ble Supreme Court in the case of State of Andhra Pradesh and another Vs. Lavu Narendranath and ors., reported in (1971) 1 SCC 607 in support of his submission thsat common entrance test is must. However, it is required to be noted that the question which came to be considered by the Hon'ble Supreme Court was for the purpose of admission, and a merit list was prepared combining the result of different Boards taking over qualifying examination and therefore, as rightly submitted by the learned advocate for the petitioner association, the observations in the said judgment would not apply to the facts of the present case. With the similar reasoning, the decision of the Hon'ble Supreme Court in the case of Ajay Hasia and Dr.Preeti Srivastva will not apply to the facts of the present case.

48.For the reasons stated hereinabove and considering the judgment of the Hon'ble Supreme Court in the case of TMA Pai, Islamic Academy and PA Inamdar

(supra), and recognition of the rights of the self financed institutions to evolve their own procedure for admission and autonomy given to the self financed institutions, when it has been decided by the petitioner association of self financed institutions to grant admission in the 1st year self financed engineering institutions strictly on merits and marks obtained in 12th standard examination conducted by the Gujarat Higher Secondary Board treating it as an entrance test and when the entire admission procedure to be supervised and monitored by the respondent No.1 Admission Committee and the said procedure to be centralized and single window system and on whatever the conditions imposed by this Court with a view to see that the merit is not given go-bye and it cannot be said that it will not satisfy the aforesaid triple test. At this stage, para 59 of the TMA Pai (supra) is required to be referred to wherein the Hon'ble Supreme Court has also observed that merit is usually determined, for admission to professional and higher education colleges, by either the marks that the student obtains at the qualifying examination or school leaving certificate stage followed by the interview, or by

common entrance test conducted by the institution or in the case of professional colleges, by Government agencies. Thus, to treat the qualifying examination as an entrance test is permissible. It is also required to be noted at this stage that with a view to see that even in future, there is no uncertainty, the learned advocate appearing on behalf of the petitioner association has made a statement at bar that the petitioner association and/or member of the petitioner association will be granting admission in 1st year engineering institutions on the basis of the marks obtained in 12th standard examination conducted by HSC Board and in future next years also, they will adopt the same procedure and will follow the same not will not change the procedure.

49. For the reasons stated as aforesaid, the petition succeeds. The impugned communication dtd.31/5/2006 issued by the respondent No.1 – Admission Committee directing the petitioner association to conduct common entrance test by the petitioner association and not to treat 12th standard examination conducted by the Gujarat Higher Secondary Board as entrance test, failing which to

adopt procedure adopted by the State Government for filling up the seats in Government-Aided Colleges i.e. to give admission on the basis of 60% marks obtained in 12th standard examination and 40% of the marks obtained in GUJCET, is hereby quashed and set aside.

The petitioner association and the members of the petitioner association i.e. Self Financed Engineering Institutions who are members of the petitioner association, are hereby permitted to grant admission in the 1st year Self Financed Engineering Institutions by preparing merit list on the basis of marks obtained in 12th standard examination conducted by the HSC Board on merits and the same shall be centralized and single window procedure on the following conditions;

(i) The admission procedure must be fair, transparent and non-exploitative and it should be on merit base. .

(ii) The entire admission procedure will be supervised and monitored by the respondent No.1 Admission Committee and the respondent No.1 Admission Committee to oversee the admission process so as to ensure that the merit is not casualty.

(iii) The names of the students will be enrolled only

after the admissions are approved by the respondent No.1 Admission Committee.

(iv) All the Self Financed Institutions will permit re-shuffling once during the academic year after first round of admission procedure in Government-Aided Colleges is over.

(v) At the time of admission and re-shuffling, the particulars of merit and the merit list prepared shall be given wide publicity inclusive of publication in website of individual institutions and widely circulated two local news papers such as Sandesh and Gujarat Samachar & one English Daily news paper having wide circulation.

(vi) Any complaint with regard to non-issuance of the admission form and/or not accepting the application form would be viewed seriously and would have a consequence of cancellation of the recognition of the concerned self financed institution also. Any complaint. With regard to the same can be made by the aggrieved candidate and/or parents of the aggrieved candidate to the respondent No.1 Admission Committee straightway and the admission committee shall look to the same and call for the the explanation and all relevant particulars / documents from the concerned institute with regard to admission immediately and the concerned institute shall respond to the same within a period of one week of the receipt of such communication from the respondent No.1 Admission Committee and considering the totality thereof, the respondent No.1 Admission Committee shall take appropriate decision as expeditiously as possible.

(vii) If it is found that any student has been admitted dehors the merit, penalty can be imposed on such institute and in appropriate case, recognition / affiliation may also be withdrawn.

(viii) As agreed, all the members of the petitioner association shall give admission by following the procedure on the basis of merits prepared on the basis of marks obtained by the students in 12th standard examination conducted by HSC Board not only for this year but also for next future years also.

So far as those Self Financed Institutions who have surrendered 75% of their total seats while keeping 25% seats with them are concerned, as assured by the learned Advocate General, they are supposed to follow the merit list to be declared by the Joint Admission Committee (JAC-PC) which will in turn be scrutinized and approved by the said Joint Admission Committee [(JAC-PC(T)] before sending the same for enrollment to the University concerned and even admission on 25% of the seats would also be overseen, supervised and monitored by the respondent No.1 Admission Committee with a view to ensure that the merit is not casualty and there may not be any maladministration and that the said procedure fulfills the triple tests of being fair, transparent and non-exploitative This will take care of the apprehension on the part of the petitioner Association that those institutions who have surrendered 75% seats keeping 25% seats with them may give admission as they like. The respondent No.1 Admission Committee is, therefore, directed to see that those self financed institutions who have surrendered their 75% seats to the State quota

keeping 25% seats with them may not give admission dehors the merits and may not indulge into any maladministration. It is apprehended by Mr.Dave, learned advocate appearing on behalf of the petitioner Association that so far as those institutions are concerned, they have already given admission even before the admission process is started. Learned Advocate General has assured that the State will look into the same very seriously. Even the respondent No.1 Admission Committee is also directed to look into the said allegation and is directed to see that those self financed institutions who have surrendered their 75% seats may not give admission on remaining 25% seats dehors the merits and/or by way of back-door. Rule is made absolute to the aforesaid extent. However, there will be no order as to costs.

(M.R.SHAH,J.)

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FURTHER ORDER

At this stage, Mr.A.D. Oza, learned advocate

appearing on behalf of the respondent No.1 – Admission Committee prays for stay of the judgment and order so as to enable the respondent No.1 Admission Committee to challenge the same before the Higher Forum.

Considering the facts and circumstances of the case and looking to the question involved in the petition, it is directed that the present judgment may not be implemented till 27th June, 2006. However, it will be open for the petitioner Association to publish the Merit List in the Website or in the news papers with a note that the present judgment and order is stayed upto 27/6/2006.

Dt.19/6/2006 (M.R.SHAH,J.)

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